IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Date of Decision:- 17.12.2007

Criminal Appeal No. 169 of 2007
(Old No. 371 of 1987)

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 17.12.2007

Note:- Bench Reader will attach this at the top of first page of the judgment when it is put up before the judge for signature.

Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 169 of 2007
(Old No. 371 of 1987)

Budhi Lal S/o Sri Khanteru Lal,
R/o Airsh Patwri Circle Girsha,
District Chamoli.

…….Appellant.

Versus

State of U.P.

……Opposite Party

Sri G.C. Kandpal, counsel for the appellant.
A.G.A. for the State.

Coram: Hon'ble Prafulla C.Pant, J.
Hon'ble Dharam Veer, J.

[Per Prafulla C.Pant, J.]

This appeal preferred under Section 374(2) of Code of Criminal procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 19.12.1986, passed in Sessions Trial No. 8 of 1986, by learned Sessions Judge,

Chamoli, whereby appellant Budhi Lal has been convicted under Section 302 of Indian Penal Code, 1860 (hereinafter referred as I.P.C.) and sentenced to undergo imprisonment for life.

(2) Heard learned counsel for the parties.

(3) Prosecution story in brief is that house of Budhi Lal (appellant) is one kilometer away from village abadi in village Airash. Appellant (Budhi Lal) got married firstly to one Sobati Devi, but he had no issue from her. Later, he got married to Jashu Devi (deceased) and from her he had seven children. Out of the seven, eldest daughter Sushila is married one. Both the wives used to live with Budhi Lal in aforesaid house. P.W. 3 Jaspal of village Kaphalkhet came to house of Budhi Lal on 09.08.1985, in connection with purchase of a pair of bullocks, belonging to him (Budhi Lal). The deal settled at Rs. 1200/- and in that night Jaspal stayed in the house of Budhi Lal. After having meals all in the family and Jaspal slept. In said intervening night i.e. 9/10th August 1985, appellant Budhi Lal at about 2 A.M. committed murder of his second wife Jashu Devi. According to prosecution story Jaspal woke to pass urine and saw from a window that Budhi Lal (appellant) mounted on the chest of his wife (Jashu Devi), assaulting her with his hands. On being questioned, why he is doing so, Budhi Lal told him (Jaspal) that he was telling his wife to behave. He (appellant) asked Jaspal being guest he should leave the place and sleep in another room. Next morning, Budhi Lal told the villagers that his wife Jashu Devi has died of pain in her stomach. He asked Jaspal to go to the houses of his brothers and relations living in village Jilasu and inform them about the death of his wife. Jaspal (P.W.3) informed the relatives of Budhi.

Lal, as told by him about the death of his wife due to pain in her stomach and came back to the village. Meanwhile, Sobati Devi (first wife of Budhi Lal) informed the Village Pradhan about the death of Jashu Devi. The Village Pradhan came to the spot at 10 A.M. and thereafter got sent the information of death of Jashu Devi to Patwari of the area (in Uttarakhand hills Patwaries are given police powers). The Patti Patwari Sri Kareem Bux (P.W.6) received the information on 10.08.1985 at his Chauki when he returned back in the evening. The entry of written information (Ext. A-2) sent through Ashadu Lal was made in the General Diary (copy of the extract Ext. A-3), by the Investigation Officer Kareem Bux on the next day i.e. 11.08.1985 at 10 A.M.. On that very day at 11.30 A.M., Pawari came to the spot and took the dead body in his possession, sealed it and prepared the inquest report (Ext.A-4) and sketch of the dead body (Ext.A-5). He also prepared a letter of request (Ext. A-6) for post mortem examination and sent the dead body for autopsy. Meanwhile, he prepared site plan (Ext. A-9) on same day i.e. 11.08.1985. He also recorded the statements of the witnesses of the inquest report. The post mortem examination was conducted by Dr. S.K. Srivastava (P.W.1) on 12.08.1985 at 4.30 P.M. at District Headquarter, Gopeshwar (District Chamoli). The said medical officer prepared post mortem examination report (Ext A-1). He opined that Jashu Devi had died due to suffocation as a result of obstruction in respiratory passage. He also recorded the anti mortem injuries found on the body of the deceased. Investigating Officer Kareem Bux (P.W.6) thereafter examined Budhi Lal and his daughter Sushila. The Investigating Officer also interrogated other witnesses. On completion of the investigation, charge sheet

(Ext. A-8) was filed by the Investigating Officer on 20.11.1985, before the Magistrate concerned.

(4) The Magistrate on receipt of the charge sheet, after giving necessary copies as required under Section 207 of Cr.P.C. to the accused committed the case to the Court of Sessions for trial. Learned Sessions Judge, after hearing the parties framed charge of offence punishable under Section 302 of I.P.C. against the accused Budhi Lal on 05.03.1986. The accused (appellant) pleaded not guilty and claimed to be tired. The clerical correction was made on the charge on 25.09.1986 and in place of date '09.10.1985', expression '9/10th August 1985' was substituted and the accused was given an opportunity if he wants to further cross-examine the prosecution witnesses, but he declined to make any further cross-examination. The prosecution got examined P.W.1 Dr. S.K. Srivastava, who conducted the post mortem examination on the dead body of Jashu Devi, P.W.2 Kedar Singh, Village Pradhan, who sent the Report (Ext. A-2) to the Patwari, P.W. 3 Jaspal, and eyewitness, P.W. 4 Sushila Devi, daughter of accused and deceased (declared hostile), P.W.5 Dhoom Singh, who accompanied Village pradhan, and P.W.6 Kareem Bux, Investigating Officer. Oral and documentary evidence adduced by the prosecution was put to the accused under Section 313 of Cr.P.C. with regard to which he admitted having two wives and also admitted that he was in his house with his wives and children on the day of incident. He also admitted in his reply under Section 313 Cr.P.C. that he had a strained relation with his second wife Jashu Devi on account of her relationship with Jaspal. However, as to the evidence of the witnesses that he (Budhi lal) committed murder of his wife, the accused stated that

the same is false. As to the opinion of Doctor that his (Budhi Lal's) wife died due to suffocation as a result of obstruction in respiratory passage, the accused in his statement under Section 313 of Cr.P.C. has stated that the Doctor has opined so. No evidence was adduced in defence. After hearing the parties, learned Sessions Judge found accused Budhi Lal guilty of charge of offence punishable under Section 302 of I.P.C. He after hearing on sentence sentenced the convict under Section 302 of I.P.C. to imprisonment for life. Hence this appeal was filed by the convict before Allahabad High Court on 04.02.1987, where it was admitted on said date. The appeal is received by this Court under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

(5) Before further discussions it is pertinent to mention here the anti mortem injuries found on the dead body by P.W. 1 Dr. S.K. Srivastava, at the time of autopsy which are part of the post mortem examination report (Ext. A-1):-

(i) Contusion over face around nostrils measuring 4cm x 3cm both sides.

(ii) Contusion over upper lip measuring 2cm x 1 cm.

(iii) Contusion over right shoulder and right arm measuring 15cm x 8cm.

(iv) Contusion over left breast 4 cm x 3cm.

(v) Contusion over right and left ileac fossea 6cm x 3cm.

P.W. 1 Dr. S.K. Srivastava, while describing the condition of the body at the time of post mortem examination, has mentioned that the rigor morits had passed of. He has further

stated that the tongue of the deceased was swollen and was found under the clutches of her teeth. The said condition is also described in the post mortem examination report (Ext.A-1). P.W. 1 Dr. S.K. Srivastava has stated that after autopsy he was of the opinion that the deceased had died due to suffocation as a result of obstruction in respiratory passage.

(6) P.W. 2 Kedar Singh is Village Pradhan. He has proved the report (Ext. A-2), which is sent to the patwari on 10.08.1985. He has stated on oath that on said date when he came to know of the death of Jashu Devi through Sobati Devi (first wife of the accused), he went to the spot along with some other villagers. According to this witness accused Budhi Lal told him at that time that the deceased had died by getting herself hanged. (There is no ligature mark found at the time of post mortem examination). P.W.2 Kedar Singh has further stated in his examination that house of the accused (appellant) is in a lonely placed and he had two wives. This witness has further stated in his examination that the accused did not let him (witness) to see the face of the deceased and the same was kept covered.

(7) P.W.3 Jaspal is chance eyewitness of the incident who has stated that on 09.08.1985, he had gone to purchase bullocks to the house of Budhi Lal and reached their at about 5 P.M.. After finalizing the deal he slept in the house of Budhi Lal on that day. According to this witness, when he woke up at about 2 A.M. in the night to pass urine he heard cries of wife of accused Budhi Lal and saw from the window that accused Budhi Lal was mounted on the chest of his wife Jashu Devi and beating her. According to this witness he saw the incident in the light of

Kerosene lamp. Learned counsel for the appellant argued that the presence of this witness is highly doubtful on the spot, as he does not belong to the village and merely for the reason that he had come to purchase bullocks from Budhi Lal, it cannot be said that he was permitted to stay in the house. It is further argued that it is quite unnatural that after lighting the kerosene lamp someone would kill his wife in the manner prosecution has narrated. We have gone through the entire evidence on record. No doubt an outsider (P.W.3 Jaspal) in the night cannot be said to be a natural witness of an incident that too in a lonely house. But his presence on the spot in the present case is established on the record from the statement of P.W.4 Sushila Devi (daughter of accused), who has stated in her examination that Jaspal was sleeping in that night in a separate room in the house of the accused. This witness has further stated that her father (accused Budhi Lal) had strained relations with his wife Jashu Devi (deceased) due to illicit relations between her mother and Jaspal. As such where a part of the story relating to the purchase of bullocks appears to be embroided one but the presence of Jaspal in the night of the incident in the house of the accused is not doubtful for the reasons disclosed by the daughter of the accused. Not only this in his own statement, the accused, when the prosecution evidence was port to him under Section 313 Cr.P.C., admits having strained relations with his wife due to her illicit relations with Jaspal.

(8) Assuming for a moment that P.W.3 Jaspal was not present in the house and that he could not have seen accused committing murder of his wife in the night, even from the circumstantial evidence on record, the charge framed against the accused is

Proved on the record. It is established form the evidence on record as admitted by the accused himself in his statement under Section 313 of Cr.P.C. that he was living in his lonely house in the night of the incident with his wives and children, it is for him to disclose as to how his wife who was in his company, died in that night.

(9) Statement of P.W. 5 Dhoom Singh who is resident of village Airash states that on 10.08.1985, he also reached along with Village Pradhan to the house of Budhi Lal and saw that dead body of Budhi Lal's wife was lying there and her face was covered with a cloth. When this witness (P.W. 5 Dhoom Singh) asked Buhi Lal to show the face of the deceased, Budhi Lal told him that "देखकर क्या करोगे पेट दर्द से मरी है फिर कहा फॉस खाकर कर मरी है". As such apart from the circumstances described above about the company of the deceased with the accused in the night, his above conduct disclosing the villagers that his wife has died due to stomach pain which gets falsified from the post mortem examination report (Ext.A-1), wherein cause of death is shown to be suffocation as a result of obstruction in respiratory passage, coupled with the fact that accused had strained relations with the deceased due to her relations with jaspal proves the fact that is Budhi Lal and Budhi Lal alone and none else who could have committed murder of the deceased. In the statement under Section 313 of Cr.P.C. accused when prosecution evidence was put to him had admitted being with his wife (deceased) in the night of the incident. He has further admitted that the prosecution evidence is correct that his house is at a lonely place.

(10) Sri G.C. Kandpal, learned counsel for the appellant drew attention of this Court to the inquest report (Ext. A-4) and pointed out that there is no explanation from the side of prosecution as to how boils due to burn were found on the dead body of the deceased. No doubt that the discrepancy is unexplained on the record from the side of the prosecution, but we are of the view that merely on that ground pith and substance of the prosecution story, which is otherwise proved cannot be disbelieved. It is not every doubt, which is material, but only reasonable doubt in the prosecution story on the basis of which accused can be acquitted from the charge. Since the charge framed against the accused relating to commission of murder by him of his wife stands proved beyond reasonable doubt from the evidence on record, merely on account of aforesaid discrepancy prosecution story cannot be doubted.

(11) For the reasons as discussed above, we do not find any force in this appeal, which in our opinion is liable to be dismissed. Accordingly the appeal is dismissed. Conviction of appellant under Section 302 of I.P.C. and sentence of imprisonment of life awarded by the trial court is affirmed. Appellant Buhdi lal is on bail. His bail is cancelled. The court concerned is directed to take the appellant into custody to make him serve out the sentence awarded by the trial court.

(Dharam Veer, J.) **(Prafulla C.Pant, J.)**

17.12.2007

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